IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.866 OF 1991

Mahadeo Baburao Gurav ...Appellant

Vs.

1. Hindurao Krishna Patil
2. Parashram Shankar Patil
3. Oriental Fire And General
   Insurance Company Ltd.Kolhapur
4. The New India Assurance Company
   Ltd.Warna Nagar,Kolhapur ...Respondents

Mr. D.S.Sawant for the Appellant
Mr. N.J.Patil for the Respondent Nos.1 and 2
Mrs.Anita Agarwal for Respondent No.3

CORAM: A.S.OKA, J.
DATED: MARCH 7,2006.

ORAL JUDGMENT:

1. I have heard Shri Sawant appearing for the Appellant, Shri Patil for Respondent Nos.1 and 2 and Mrs.Agarwal for Respondent No.3.

2. The Appellant is the original Applicant in a Claim Petition filed under the Motor Vehicles Act, 1939. The Appellant claims to be a businessman. On 28th October 1982 the Appellant along with his friend were proceeding by a scooter towards Koregaon from Ichalkaranji. The Applicant was a pillion rider on the scooter. When the scooter reached near Narande Fata it overtook a tractor which was having two trolleys. The case of the Appellant is that while the scooter was overtaking the tractor the trolleys of the tractor dashed against the scooter. The Appellant and his friend sustained injuries. Initially, the claim of the

Applicant was Rs.1,63,000/-. However, he restricted his claim to Rs.70,000/-. The claim Petition was opposed by the Respondent Nos.1 and 2 by filing a written statement. The contention of the Respondent Nos.1 and 2 is that accident took place as a result of negligence on the part of the Appellant's friend who was driving the scooter. The Insurance Company also filed written statement opposing the claim. Relying upon the evidence produced by the Appellant the learned Member of the Motor Accident Claim Tribunal came to the conclusion that the Appellant sustained injuries due to rash and negligent driving of the tractor by the Respondent No.2. The learned Member of the Tribunal awarded compensation of Rs.14,000/- together with interest thereon at the rate of 12% p.a. from the date of application till the date of payment along with proportionate costs. The break up of the compensation awarded by the learned Member of the tribunal is as under :

Special Damages	: Rs. 1000.00	For loss of income of 14 days and for gratuitous services of attendant.
General Damages	: Rs.10000.00	For fracture of left wrist
.	Rs. 3000.00	For pain, agony and mental shock.
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	Rs.14000.00	
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3. Shri Sawant for the Appellant invited my attention to the oral and documentary evidence on record. He pointed out that

the medical certificate which is duly admitted in evidence shows that the Appellant suffered from three fractures and not only one fracture. He pointed out that though Witness No.2 examined by the Appellant has stated that the Appellant was not required to pay any charges in the K.E.M. Hospital, Ichalkaranji, his evidence shows that the Appellant was admitted as an indoor patient for 16 days. He submitted that though the Appellant could not produce any bills for purchase of medicines and for travelling expenses, certain amount ought to have been awarded on account of the said expenses. He pointed out that general damages are awarded on erroneous assumption that there was only one fracture of lower end of left radius and ulna.

4. The learned Advocate for the Respondent Nos.1 and 2 opposed the Appeal by pointing out that compensation of Rs.14,000/- with interest is a reasonable compensation and no interference was required. Learned Counsel for Respondent No.3 opposed the Appeal by contending that no interference was called for. She contended that the damages awarded on account of fracture of lower end of left radius and ulna is itself on higher side.

5. I have considered the submissions. The Appellant examined Dr.Adinath Chougule, Medical Officer, K.E.M. Hospital, Icchalkaranji. He deposed that on 28th October 1982 the Appellant was admitted to K.E.M. Hospital as indoor

patient. The medical certificate signed by the Medical Officer of the K.E.M. Hospital was proved in his evidence which is at Exh.37. Perusal of the Medical certificate at Exh-37 shows that initially following injuries were noticed on the person of the Appellant :

1) Fracture lower end of left radius and ulna with swelling around it, 4" X 3", no external injury seen.

2) Abrasion 3" X 2" over the posterior aspect of left elbow joint, no active bleeding clinically no fracture,

3) Abrasion 2" X 2" over the right injuinal region, no bleeding.

4) Abrasion 8" X 6" over the lumbo sacral region extending over the right gluteal region, no active bleeding.

5) Clinically fracture neck of right femur, no external injury,

6) Fracture of lumbosacral vertebra

7) Multiple abrasions size varying from 2" X 1" to 1/2" over both the lower limbs, no active bleeding.

The Medical certificate further discloses that the Appellant was subjected to radiological examination in which it was revealed that apart from the fracture on lower end of left radius and ulna, the Appellant suffered from fracture of lumbosacral vertebra. Reading the certificate at Exh.37 as it is, it is crystal clear that apart from fracture of lower end of left radius and ulna, the radiological examination revealed that the Appellant suffered fracture of left lumbosacral vertebra. Apart from that there are abrasions at

3 to 4 places on the person of the Appellant. In my view the learned Member of the Tribunal had committed an error by awarding general damages of only Rs.10,000/- on account of fracture on left wrist. Considering the injuries suffered including more than one fracture, the quantum of general damages will have to be enhanced by Rs.15,000/-. Though the treatment in the hospital was free in the sense that no amount was required to be spent on hospitalisation and on fees of Doctors, it cannot be ignored that the Appellant was an indoor patient for a period of 16 days. The Appellant has stated that his mother was attending to him regularly in the hospital. He was required to spend some amount on special diet. In my view, a reasonable amount ought to have been awarded on account of travelling expenses incurred by the mother of the Appellant. Some amount will have to be awarded on account of special diet. On these two counts a sum of Rs.4,000/- deserves to be awarded.

6. None of the Respondents have challenged the findings recorded by the Tribunal as regards negligence. Therefore, the only question which is to be decided is regarding quantum. As stated above, the amount of compensation will have to be enhanced by total amount of Rs.19,000/-. The total compensation payable will be Rs.33,000/-.

7. Hence, I pass the following order :

(a) The operative part of the Judgment of the Tribunal is modified and the same will be read as under :

"i) The application is partly allowed.

ii) The Respondent Nos.1,2,3 and 4 Hindurao Krishna Patil, Parasharam Shankar Patil, Oriental Fire and General Insurance Company Limited and the New India Assurance Company Limited shall jointly and severally pay the compensation of Rs.33,000/- (thirty three thousand only) to the Applicant Mahadev Baburao Gurav with interest at the rate of 12% per annum from the date of the application i.e. 4-4-1984 till payment and proportionate costs of this application under Section 110-A of the Motor Vehicles Act, 1939."

(b) The Appellant is entitled to proportionate costs from Respondent Nos.1 to 4 throughout.

(c) In the event the Appellant has received any amount as per the impugned Judgment and Award, the same will be adjusted towards the payment which is to be made as per this order.

Judge.